IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

OP.No. 7697 of 2001(N)

PETITIONER:

M/s.K.ABDU & CO.,
GROCERY MERCHANTS,
TALIPARAMBA REPRESENTED BY
ITS MANAGING PARTNER
SHRI.K.ABDU.

BY ADV. SRI.RAJESH NAMBIAR

RESPONDENTS:
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1. **INCOME TAX OFFICER,**
   WARD – 3, CANNANORE.

2. **COMMISSIONER OF INCOME TAX,**
   CALICUT.

BY SRI.GEORGE K.GEORGE, SC FOR INCOME TAX.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.No.12529 of 2001 OP.NO.7697 OF 2001-N.

DISMISSED.

19.11.2007. **Sd/- C.N.Ramachandran Nair, Judge.**

APPENDIX

PETITIONER'S EXHIBITS:-

P1: **Copy of the intimation under Sec.143(i)(a) of the Income Tax Act for the Assessment year 1996-97.**

P2: **Copy of the notice under section 154/155 of the Income Tax Act, 1961 dtd.10.12.98.**

P3: **Copy of the order of the first respondent dtd.4.1.99 under Sec.154 of the Income Tax Act.**

P4: **Copy of the revision petition dtd.28.12.1999.**

P5: **Copy of the letter dtd.17.1.2001.**

P6: **Copy of the revisional order of the 2nd respondent dtd.18.1.2001.**

RESPONDENTS' EXHIBITS:- **Nil.**

(true copy)

P.S. TO JUDGE.

kvs/-

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 7697 OF 2001

Dated this the 19th day of November, 2007

JUDGMENT

C.R.

Petitioner is challenging Ext.P6 order issued by the Commissioner of Income-tax under Section 264 of the Income-tax Act confirming disallowance of addition made under Section 40A(3) for the payments made in cash in excess of Rs. 10,000/-. During the previous year, relevant to the assessment year 1996-97, petitioner made payments of Rs. 19,05,964/- in cash against requirement of payment through account payee cheque or DD which attracts addition of 20% under Section 40A(3) of the I.T. Act. Out of this amount, petitioner claimed that an amount of Rs. 3,52,943/- and Rs. 4,74,971/- were paid by the petitioner to the bank account of the suppliers who supplied goods to the petitioner who is a grocery merchant. Even though initially the claim was allowed by the assessing officer, he rectified it under Section 154 and made addition under Section 40A(3) for the payments made in cash in excess of Rs. 10,000/-. Against this petitioner filed revision before the Commissioner, who rejected the

same vide Ext.P6 order , which is under challenge in this O.P.

2. Heard counsel for the petitioner and standing counsel for the Income-tax Department. The claim put forward by the petitioner is that payments fall specifically within the exception clause, Rule 6DD(a) of the Income Tax Rules, 1962. For easy reference the said rule is extracted hereunder:

> 6DD. No disallowance under sub-section 3 of Section 40A shall be made where any payment in a sum exceeding ten thousand rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft in the cases and circumstances specified hereunder, namely:-
>
> (a) where the payment is made to--
>
> (i) the Reserve Bank of India or any banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10of 1949);
>
> (ii) the State Bank of India or any subsidiary bank as defined in section 2 of the State Bank of India (subsidiary Banks) Act, 1959 (38 of 1959);
>
> (iii) any co-operative bank or land mortgage bank;
>
> (iv) any primary agricultural credit society as defined in clause (cii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934), or any primary credit society as defined in clause (civ) of that section;

(v) the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1948 (15 of 1948);

(vi) the Industrial Finance Corporation of India established under Section 3 of the Industrial finance Corporation Act, 1948 (15 of 1948);

(vii) the Industrial Credit and Investment Corporation of India Ltd.

(viii) the Industrial Development Bank of India established under Section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(ix) the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963);

(x) the Madras Industrial Investment Corporation Ltd., Madras;

(xi) the Andhra Pradesh Industrial Development Corporation Ltd., Hyderabad;

(xii) the Kerala State Industrial Development Corporation Ltd., Trivandrum;

(xiii) the State Industrial and Investment Corporation of Maharashtra Ltd., Bombay;

(xiv) the Punjab State Industrial Development Corporation Ltd., Chandigarh;

(xv) the National Industrial Development Corporation Ltd., New Delhi;

> (xvi) the Mysore State Industrial Investment and Development Corporation Ltd., Bangalore;
>
> (xvii) the Haryana State Industrial Development Corporation Ltd., Chandigarh;
>
> (xviii) any State Financial Corporation established under Section 3 of the State Financial Corporations Act, 1951 (63 of 1951);

The contention of the petitioner is that payments were made to the account of the suppliers maintained with State Bank of Mysore and Hassan District Co-op. Central Bank Ltd. Counsel for the petitioner contended that all these Banks come under clause (ii) of sub-rule (a) of Rule 6DD and therefore these two payments are eligible for exemption from disallowance under Section 40A(3) of the Act. Counsel also relied on the decision of the Supreme Court in GURMUKH V. CIT, (1991) 2 K.L.T. 350 (SC) whereunder the Supreme Court has held that purpose of Section 40A(3) is to verify whether payments made are genuine or not. Standing counsel for the Department on the other hand contended that petitioner is not entitled to the protection under Rule 6DD(a) of the Rules because the payments made by the petitioner are not to the institutions referred to therein. I am in agreement with the

contention of counsel for the respondents because the protection under clause (a) of Rule 6DD is available only if the payments are made to any of the institutions referred to thereunder. Obviously in order to qualify for the benefit of Rule 6DD (a) the beneficiary of the payee should be an institution referred to therein. Even though counsel for the petitioner contended that payments to any beneficiary in the account maintained in the Banks referred to in Rule 6DD(a) is also covered by the exception, I do not think the same can be accepted because, some of the institutions referred to in the Rule, namely, Reserve Bank of India, State Financial Corporations, Industrial Development Corporation and other financial institutions are not engaged in banking operations. Therefore Rule 6DD (a) applies only for payments to institutions referred to therein and not for payment made to any party's account maintained in the institutions referred to therein. In the circumstances, I reject the contention of the petitioner and uphold Ext.P6 order of the Commissioner of Income-tax confirming the assessment revised under Section 154 of the Act.

3. The next contention raised by the petitioner is that cash

remittances in the account of the suppliers were made by entrusting the cash to the truck drivers and therefore the same is covered by clause (l) of Rule 6DD. This contention is seen not pressed before the Commissioner. In any case, the truck drivers who brought the goods cannot be treated as petitioner's agent who is required to make payment in cash for the goods to the suppliers. In the circumstances, this contention is also rejected.

O.P. is dismissed as devoid of any merit.

(C.N. RAMACHANDRAN NAIR)
Judge